

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMON EUGENE JOHNSON,

Defendant-Appellant.

UNPUBLISHED

September 30, 2008

No. 280795

Oakland Circuit Court

LC No. 2005-200796-FC

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

MEMORANDUM.

After a jury trial, defendant was convicted of one count of armed robbery, MCL 750.529, and was sentenced as a third habitual offender, MCL 769.11, to 15 to 40 years’ imprisonment. In a prior appeal, this Court affirmed defendant’s conviction, but remanded for resentencing. *People v Johnson*, unpublished opinion per curiam of the Court of Appeals, issued June 26, 2007 (Docket No. 267149). On remand, the trial court again sentenced defendant to 15 to 40 years’ imprisonment. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court previously remanded for resentencing after determining that offense variable (OV) 13 of the sentencing guidelines, MCL 777.43, was erroneously scored at 25 points without adequate evidence to support the score. On remand, the trial court scored OV 13 at zero points, which reduced defendant’s sentencing guidelines range from 108 to 270 months to 81 to 202 months. The court found that the original sentence was still appropriate and again imposed a sentence of 15 to 40 years’ imprisonment. Defendant’s sole claim on appeal is that his minimum sentence is disproportionate because, even though it is within the adjusted sentencing guidelines range, it is closer to the upper limit than to the middle of the range.

The sentencing guidelines take into account the severity of the offense and the defendant’s criminal history, and proportionality is an inherent aspect of any sentence imposed within the sentencing guidelines range. *People v Babcock*, 469 Mich 247, 263–264; 666 NW2d 231 (2003). Defendant’s sentence falls within the guidelines, and he has not alleged that it was based on inaccurate information or an error in the scoring of the guidelines; because we may not consider a challenge based exclusively on proportionality, the sentence must be affirmed. MCL 769.34(10); *People v Pratt*, 254 Mich App 425, 429–430; 656 NW2d 866 (2002).

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher